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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 August 2001, at 3 p.m.

Chairman: Mr. WEISSBRODT

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND RACIAL SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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The meeting was called to order at 3.05 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND RACIAL SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

1. The CHAIRMAN first invited the members of the Sub-Commission to comment on the proposal by Ms. Daes that they should be allowed to take the floor on the agenda item for no more than 15 minutes, with the possibility of dividing their time between two statements if they so wished.

2. Mr. EIDE said he hoped that the Chair would display some flexibility with regard to the time limit for statements by members of the Sub-Commission, not only on item 2 but on other agenda items as well.

3. The CHAIRMAN invited the members of the Sub-Commission to adopt the proposal by Ms. Daes in respect of agenda item 2, on the understanding that the question of time limits for statements would be reviewed when other agenda items were taken up.

4. It was so decided.

5. The CHAIRMAN invited representatives of Governments wishing to do so to take the floor on agenda item 2.

6. Mr. KESANG (Observer for Bhutan) said that significant progress had been made in solving the problem of the refugees in camps in eastern Nepal. The tenth meeting of the Ministerial Joint Committee, held in Kathmandu in December 2000, had led to an agreement on the establishment of a joint verification team that would determine the identity of the refugees, many of whom were not Bhutanese, as both Governments had acknowledged. Verification of the first camp had begun on 26 March 2001 and was proceeding smoothly. The verification exercise would ensure that all persons had an opportunity to state their claims. The Governments of Bhutan and Nepal would be meeting during the second half of August 2001 to discuss the joint verification process.

7. The Government of Bhutan remained committed to finding a just, comprehensive and lasting solution to the refugee problem; it was prepared to implement any agreements that were concluded with the Government of Nepal and was confident that the international community would encourage that bilateral process.

8. Mr. VAHABZADA (Observer for Azerbaijan) said that the principles of international law that prohibited the occupation or acquisition of another State's territory by force were often violated. There were situations in which territories continued to be occupied even after the Security Council had condemned their occupation and called for respect for the sovereignty, territorial integrity and inviolability of the occupied State's internationally recognized borders.

It was also disturbing to note that the restoration of human rights, including compensation and prosecution for the crimes committed, was being obstructed by the refusal of certain Governments to recognize their role and their responsibility, direct and indirect, in armed conflicts.

9. His Government was deeply concerned at the acts of terrorism committed by the other State party to the conflict with a view to dismembering a sovereign State, and it was concerned that occupied Azerbaijani territories had become a focal point for illicit trafficking in weapons and narcotic drugs. States not involved in the conflict were supporting and encouraging those actions, which was one of the main reasons for the spread of armed conflicts that threatened stability and security not only in the South Caucusus but in the world. The international community should therefore prepare a comprehensive legal framework for combating international terrorism as a crime against humanity.

10. Violations of the provisions of international law which prohibited the transfer by an occupying Power of its own population to the territory it occupied constituted a war crime entailing international criminal responsibility. Such transfers were intended to prolong the occupation indefinitely. His Government was also concerned by the problem of missing persons in armed conflicts and wished to draw the attention of the Sub-Commission to the fact that the work of international humanitarian organizations was hampered by the illegal detention of a certain category of persons by the other party to the conflict. The Sub-Commission could make a positive contribution to the work done on those topics by studying existing practices more fully.

11. Mr. IŞCAN (Observer for Turkey) said that the advancement of nations was currently assessed on the basis of respect for human rights, which was an ideal for all of mankind. In that connection, his Government was fully committed to implementing constitutional and legal amendments that would align domestic legislation with international standards and improve the situation of human rights in Turkey. Given that that process was irreversible, the authorities were endeavouring to promote human rights education.

12. Parliament had adopted a number of legislative texts aimed, inter alia, at a restructuring of the State security courts and the introduction of an amnesty and sentence reduction through a "repentance law"; the provisions of the Criminal Code defining torture, ill-treatment and abuse of power by civil servants had been amended to increase sentences imposed for the commission of those offences by public officials or the drafting of false medical reports to conceal acts of torture. The definition of torture and inhuman or degrading treatment had been brought into line with the definitions contained in United Nations and European instruments. Reform of the Civil and Criminal Codes, the Code of Criminal Procedure and the Code on the Execution of Sentences was continuing, and draft legislation establishing the institution of ombudsman had been submitted to Parliament. Various legal and administrative measures would be taken to prevent any future allegations of torture and ill-treatment in Turkey and to enhance the independence of the judiciary. A law on the postponement of trials and sentences for crimes involving the mass media had also been adopted.

13. The Government was determined to strengthen and upgrade the status of structures for the protection of human rights. The Government's human rights activities were now the responsibility of the High Council for Human Rights, which was chaired by a Minister of State. A human rights department in the Office of the Prime Minister and a human rights consultative board had been established. Human rights councils had also been set up throughout the country.

14. Improvement of the conditions of detention in prisons was another priority of the Turkish Government, and a reform known as the F-type prison project had been introduced. Although the new prisons were fully compatible with European standards and offered far better living conditions, organized gangs had launched a campaign of hunger strikes. All efforts by the authorities to find a peaceful solution and bring the strikes to an end had proved fruitless. As the lives of certain prisoners on strike had been in serious jeopardy, security officers had had to intervene. Despite the measures taken to minimize casualties, some officers and prisoners had lost their lives. Those tragic events showed how urgent prison reform had become in Turkey, and any criticism of that reform was unfair and malicious, since the reform was intended to make Turkish prisons conform with the highest international standards.

15. Turkey had signed both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 14 August 2000. It had also signed the two Optional Protocols to the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 8 September 2000. Ratification of the Convention on the Elimination of All Forms of Racial Discrimination had begun, and Turkey had ratified International Labour Organization (ILO) Convention 182, on the worst forms of child labour. In addition, Turkey was cooperating closely with the human rights bodies of the United Nations system. The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had visited Turkey in February 2001, and the Representative of the Secretary-General on internally displaced persons was expected to visit soon.

16. Guided by the Turkish people's desire to become fully integrated in the international community, the Turkish authorities were determined to build a democratic and secular society in which human rights were fully respected. His delegation therefore hoped that the dialogue on human rights issues would be characterized by goodwill, sincerity and cooperation.

17. Mr. AKRAM (Observer for Pakistan) said that the Pakistani authorities had instituted a series of measures to promote human rights in Pakistan. Specifically, they had launched a vast structural reform programme with a view to improving governance and reducing poverty. A study group on human development had been set up and the authorities were committed to developing a coherent and transparent economic policy that would eliminate all forms of corruption.

18. The Government was also planning to implement the Supreme Court's decision to hold general elections by 12 October 2002. Some local elections had already taken place, and candidates for the office of district administrator would include representatives of minorities; 33 per cent of all vacancies would be reserved for women. The high voter turnout in

local elections was a clear indication that the population fully supported grass-roots democracy. It should also be noted that for the first time in the history of Pakistan civil servants and police officers would report directly to local elected officials.

19. A policy and a plan of action for ending child labour and preventing the hiring of underage children were being implemented at the national level. Measures had also been instituted to make primary education universal and to encourage working children to pursue out-of-school education and vocational training.

20. Illegal weapons, which were a major factor in violence and civil unrest, were another source of concern to the authorities, and a campaign had been launched to eliminate them. A series of measures had also been taken to revitalize the judiciary, chiefly through the introduction of computers, reduce the length of trials and strengthen the training of judges. A standing commission on police and prison reform had been established. The Government had penalized 29,000 police officers for abuse of authority and had removed another 1,100 from their posts for embezzlement. In addition, more than 60,000 prisoners had been released during the past 18 months, and an ordinance abolishing the death penalty for persons under the age of 18 had been promulgated.

21. The Government was encouraging civil society to contribute to the promotion and protection of human rights. Nearly 12,000 non-governmental organizations (NGOs) were registered with the Department of Social Affairs, and 460 development projects of the Ministry of Women's Development had been assigned to NGOs. Women were encouraged to play a role in all areas; they were represented in federal, provincial and local institutions. All those measures to promote and protect human rights should also contribute to the solution of the problems of peace, security and development in South Asia.

22. Ms. RUSTAM (Indonesia) said that over the past three years Indonesia's leaders had had to face a wide range of challenges posed by the transition from an authoritarian regime to a representative pluralistic democracy in which human rights were duly respected. Progress had been made in the promotion and protection of human rights in society and national institutions. A law had been passed in November 2000 which provided for the setting up of human rights courts to hear cases of grave human rights abuses, genocide and crimes against humanity. Two decrees had also been issued establishing human rights courts in the cities of Jakarta, Medan, Surabaya and Makassar. Another decree had established two ad hoc human rights courts at the Jakarta District Court headquarters to hear cases of gross human rights violations in East Timor and Tanjung Priok. The Indonesian authorities and the Office of the United Nations High Commissioner for Human Rights had established technical cooperation programmes which included training of the judges who would serve in the ad hoc courts.

23. Hundreds of presumed human rights violations had led to investigations which had culminated in a number of trials in joint civilian-military courts. The Government had worked closely with the National Commission on Human Rights to investigate incidents which had occurred in East Timor, Abepura, Papua, Kebun Cengkeh and the Moluccas. Unfortunately, those efforts had been overshadowed both by separatists movements and by inter-community conflicts in far-flung corners of the country. The Government had been actively pursuing a policy of dialogue, which it saw as the only realistic way forward.

24. In Aceh, the Government had held several rounds of talks since January 2000 with the leaders of the Free Asia Movement and had adopted a series of measures aimed at improving the situation in the province, particularly in the economic sphere. The Government had granted Aceh special autonomy which allowed it to apply Islamic law. In addition, 70 per cent of oil and gas revenues and 80 per cent of all revenues from agriculture and fisheries would be returned to the province.

25. In Papua, despite sporadic bouts of militant resistance and armed insurrection over the past four decades, the Indonesian Government was intent on implementing wide-ranging reforms of democratic institutions and redressing the socio-economic situation. Draft legislation granting the province special autonomy had been passed by the Government and would give Papua wide-ranging rights in local governance and a greater share of the revenues accruing from the exploitation of its natural resources.

26. The conflict in the Moluccas was on the way to being resolved as a result of a concerted policy which actively engaged religious and community leaders in dialogue in order to restore lasting peace in the archipelago. Humanitarian initiatives had been taken and rehabilitation, resettlement, reconstruction and reconciliation activities were being carried out. The efforts by both the central and local Governments to tackle the root causes of the unrest had led to a visible improvement in the situation.

27. In East Timor the question of the status of refugees had yet to be resolved, but the Indonesian Government was sparing no effort to find a peaceful and fair solution. The registration of refugees had been monitored by 12 international observers, who had been impressed with the organization of the operation and the conditions in which it had taken place. Registration had been completed on 7 June 2001 and had shown that only a handful of refugees wished to return to East Timor. The overwhelming majority had expressed a desire to remain in Indonesia, where they would be resettled and no longer be considered refugees. Since that time, the Indonesian Government had held several meetings with representatives of the United Nations, the International Organization for Migration and the European Union on the topic of refugees.

28. The Government had also reinforced its cooperation with the United Nations Transitional Administration in East Timor (UNTAET), with which it had signed a memorandum of understanding on mutual assistance in legal, judicial and human rights matters. On 19 and 20 July 2001, the Indonesian Government had met with representatives of UNTAET to discuss border security cooperation, police cooperation and cross-border movements of people and goods. At the same time, her Government condemned the recent border incident in which an Indonesian soldier had been killed by a member of the United Nations peacekeeping forces in East Timor. The Government had demanded that UNTAET should conduct a thorough investigation of the incident. Since 1997, Indonesia had been beset by serious political and economic problems which posed an enormous challenge for a country that was vast and geographically spread out, but the Government was determined to take on that challenge within a democratic system. In so doing, it sought to redress past wrongs.

29. Mr. GUISSÉ said emphatically that, notwithstanding the many official statements on the progress of human rights, the world was increasingly seeing those rights denied. Human rights were being flouted and trampled underfoot everywhere. The hopes that had been raised by the adoption of the Universal Declaration of Human Rights had become a pipe dream. The decline of human rights was reflected in violations that were increasingly frequent, serious and massive, and in the impunity of those who systematically perpetrated such violations, whether States or individuals. Torture had become commonplace, used routinely by the police and in preliminary investigations. Torture, both physical and psychological, had become the tool of choice for those in power who used it to extract the truth and keep their peoples in submission. In that regard, it must be said that all States were primitive and brutal.

30. An example of the denial of the most basic rights was the degrading treatment inflicted on migrant workers and their families in Europe in border police stations. The serious abuses they suffered - which sometimes led to their death - went entirely unchecked; such practices had in fact been strongly condemned by the European Court of Human Rights.

31. The lack of respect for human rights was patently obvious in Africa, a continent plunged in utter poverty and faced with the spread of the most serious diseases and the threat of widespread famine. Yet the international community did not appear unduly worried, since pharmaceutical laboratories had initially denied Africa certain treatments for acquired immunodeficiency syndrome (AIDS). Likewise, certain scientific experiments in South Africa under the apartheid regime had been quite simply aimed at destroying the black race by attacking melanin - an act that constituted an extreme form of denial of the right to be different - had elicited hardly any international reaction at all. One might wonder whether the world had become a place in which certain races had to be eliminated in order for others to survive.

32. At a time when the wrongs done to peoples throughout history were being acknowledged, Africa and its people were being denied an opportunity for acknowledgment of the inhuman treatment that had been inflicted on them. The international community refused to recognize that slavery constituted a crime against humanity. The Sub-Commission itself had requested Mr. van Boven to prepare a study on possible forms of reparation for violations of human rights and humanitarian law. One might well ask whether the conclusions of that study would be applicable to Africa. The text, however, existed and the means of making reparations were clear. Yet Africa was being asked to renounce any request for reparation. The international community was applying a double standard, and the Third World could only find its attitude disturbing.

33. Mr. JOINET noted that the scandal provoked by the refusal to distribute AIDS vaccine in its generic form had prompted a response, including from ATTAC, a French NGO, which had mounted a major campaign to deal with that problem. He wondered whether the Commission on Human Rights or the Sub-Commission was the proper body to follow up the study by Mr. van Boven which Mr. Guissé had mentioned.

34. Mr. PINHEIRO warmly commended Mr. Guissé for having raised the question of reparation openly, since in other forums, particularly the Preparatory Committee for the Durban Conference, efforts were being made to stifle any discussion of the problem. The Sub-Commission must consider ways of honouring the legitimate claims of all peoples whose rights had been violated.

35. Mr. EIDE cited the example of the German Government, which had just recognized Germany's responsibility to foreign civilians who had done forced labour during the Nazi period. Japan, which had yet to make amends honourably for similar practices, might do well to consider the legislation recently adopted by the Bundestag. Looking beyond those examples, the whole issue of the consequences of slavery and colonization - and modes of compensation - must be reviewed.

36. Ms. WARZAZI said that she had long hoped to see the question of reparation for the peoples who had suffered the ills of colonization in general placed on the agenda of the United Nations. An opportunity to raise the topic had been provided, through a text on impunity, by Mr. Joinet the previous year. The question of reparation for flagrant and massive abuses of human rights which constituted crimes against humanity committed during the colonial period, the wars of conquest and slavery had thus been mentioned for the first time in the Sub-Commission's decision 2000/114, adopted at its previous session. Pursuant to that decision, the Sub-Commission had before it a note from the Secretary-General on that topic, and that constituted a first step.

37. At present it was clear that the simplest way of solving the problem of reparation would be debt cancellation, since the developing countries' current situation was essentially the result of the plundering of their natural resources by the colonial Powers. The question should therefore be considered calmly, without yielding to the blackmail of certain States that sought to avoid a debate on colonialism at the Durban Conference. The problem of impunity had been raised. The Sub-Commission must continue to explore it in greater depth until the peoples concerned had been vindicated. The question could be the subject of a draft resolution of the Sub-Commission.

38. Mr. ALFONSO MARTÍNEZ said that he shared a number of the concerns raised by Mr. Guissé and wished to associate himself with his statement. The Sub-Commission must consider how to compensate massive violations committed in the past without overlooking contemporary problems. It needed to formulate concrete proposals on the topic, taking into account the work done by other competent bodies.

39. Mr. JOINET said that, at the level of principle, there was a certain convergence of views, at least within the Sub-Commission, concerning recognition of the right to reparation. That aspect of the question, then, should not pose too many problems. The question of modalities, however, might be more problematic. In their joint report on the question of impunity, he and Mr. Guissé had already outlined the possibility of providing compensation in the form of debt forgiveness. That idea was beginning to take hold, but the means of financing such a measure had to be determined. Some had suggested the imposing of a global tax, or Tobin Tax, but that

solution would still require some technical refinements. As what was most important was to state the problem, and it would therefore be useful for the Sub-Commission to summarize its contribution to the topic in a document in order to see how it could move the discussion forward without duplicating the work done by other bodies.

40. Mr. GUISSÉ said that he did not view reparation as being solely financial. It could take many forms in addition to debt cancellation, such as recognition of the black slave trade as a crime against humanity, recognition of the rights of the African people and restitution of stolen cultural property, for example. Official development assistance and technology transfers were still other forms of compensation. Reparation was not in itself quantifiable, but was something that could only be estimated. It was that estimate that would ultimately allow all the parties concerned to dispose of the problem of slavery and its consequences.

41. Mr. EIDE supported the principle of debt cancellation as a form of reparation; however, it was important to ensure that such a measure did not benefit only those in power but had a positive impact on all the people concerned. Debt cancellation should therefore be subsidiary to ensuring the exercise of economic and social rights in particular. The Sub-Commission might wish to consider preparing a study on ways of making the principle of debt cancellation technically feasible.

42. Ms. ZERROUGUI said that in the light of the machinations of certain States, it was essential first of all to secure recognition of the wrongs done to the peoples who had been victims of slavery and colonization. Once that claim had been honoured, the question of compensation could be considered. The debate had clearly not reached that point yet, as the Preparatory Committee for the Durban Conference was making clear. However, what the peoples that had suffered from colonization and slavery sought was recognition of the fact that they had been raped, that they had been victims of unspeakable crimes and that their delay in developing was largely attributable to the oppression and plundering that characterized their past.

43. Ms. DAES said that she herself had seen the terrible consequences of colonialism during a trip to Morocco. That was why it was now necessary for the former colonial Powers to acknowledge their responsibility. The question must be considered from the moral standpoint, before considering what measures to take. She believed that the Sub-Commission should submit a study on that topic.

44. Mr. FAN Guoxiang endorsed the statement by Mr. Guissé, but wondered how far back in the history of mankind one should look when considering the question of victims: ought one to go back to the Roman Empire, or to Genghis Khan? He proposed beginning with recent history, in other words with colonization, and to consider the consequences of colonization and of the Second World War. In both cases, the question must first be considered from the moral standpoint before the extent of compensation could be determined. The political aspects of the question should also be considered, with thought given to who would provide compensation and who would benefit from any compensation made. The legal aspects of the question, however, did not fall within the competence of the Sub-Commission; other bodies existed to consider them.

45. Mr. JOINET said that the Sub-Commission was in a position to bring technical expertise to the question of acknowledging the wrongs done to the victims of colonization and slavery by basing itself on its prior work. Should the Sub-Commission prepare a new document, it ought to be brief and provide a set of references. It would have a first section that would include the statement by Mr. Guissé, who had clearly demonstrated that, in addressing the question of reparation, the problems involved were not necessarily insoluble. Mr. Guissé had spoken of recognition, rehabilitation, possible compensation and restitution. Those measures could be implemented in phases, and even be partial in nature.

46. The second section of the document would consider how the process of reparation would be carried out. First came recognition, which could be broken down into external and internal recognition. External recognition was a topic of current interest, and recent history afforded some examples: President Cardozo in Brazil had recognized the atrocities committed by the military Government and Spain had rehabilitated Republican combatants in the Civil War. Internal recognition was more difficult. The problem could be seen in contemporary France, where the question of responsibility for the atrocities committed during the war in Algeria were giving rise to a huge debate within public opinion, including military circles. In other words, a political declaration by a head of State was not enough. People's ways of thinking must be changed, and such a change was made more difficult by the fact that it had to be wrought by a generation which, being younger, felt less affected by the mistakes or errors of its elders.

47. There was also the question of restitution, which referred chiefly to cultural property. For such reparation to be effective, it was necessary not only to give back to a country its cultural heritage, but also to provide the country with the means of conserving that heritage.

48. Lastly, there was compensation. But regardless of whether it involved debt cancellation or another form of cooperation, the beneficiary must always be the people.

49. Mr. PARK said he was sincerely grateful to Mr. Guissé for having opened the debate on the question of reparations. As one speaker had noted, Germany had successfully managed to confront its past, which was not the case with other countries of that region. International law provided for various ways of making compensation, but that was not the most important aspect of the question. What was essential was the moral attitude of the great Powers vis-à-vis their colonial past. He agreed with other speakers in that regard and felt it was indispensable that the question should be dealt with systematically, both under agenda item 3, in connection with impunity, and in another context.

50. Ms. HAMPSON said she wished to draw a clear distinction between reparations in the strict sense of the term, which meant compensation for damages, and moral reparations. In the first case, there must be a victim to compensate, whether it was the actual victim or the victim's descendants, and a natural time limit. Moreover, the person to be compensated must have been the victim of an act recognized as an offence or a crime at the time it was committed. Otherwise, a person could be punished for an act that had not been illegal at the time it had been committed, which in criminal law constituted a violation of human rights. That being said, there were many acts that had been illegal at the time they had been committed. That had been the case during

the 1930s and 1940s, even though the Geneva Conventions had not yet come into existence. Moreover, the wars of decolonization had also been characterized by illegal acts, whether as part of internal conflicts or international conflicts.

51. With regard to recognition of crimes committed, she observed that while Germany could be cited as an example in that connection, some States still had a long way to go. And Japan was not alone in that respect. Italy, for example, was having a great deal of difficulty in acknowledging the use of poison gas by soldiers in what had been Abyssinia and was now Ethiopia.

52. Unfortunately, in speaking of reparations stricto sensu there did not seem to be any courts where appeals could be lodged. She was thinking, for instance, of the comfort women and prisoners of war who had filed complaints in vain with the Japanese courts. It was therefore necessary to specify what was meant by appeal bodies when dealing with reparations stricto sensu. As for moral reparation, she was in favour of the proposal by Mr. Joinet to prepare a document that would include Mr. Guissé's statement. It was also crucial to acknowledge the importance of symbolic gestures.

53. She supported Ms. Warzazi's suggestion concerning debt forgiveness, provided that that was not the only measure contemplated. Lastly, she believed that the debate on the question of reparations that was taking place in other forums would be facilitated if the distinction which she had just made between the two types of reparation was adopted. She therefore hoped that the calm debate which had taken place in the Sub-Commission would serve as an example for the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and help to bring about a consensus.

54. Mr. GUISSÉ said that Mr. Fan Guoxiang seemed to want to limit the question of compensation to the colonial period in order to avoid talking about slavery; he had also raised the issue of who would provide compensation and who would benefit from it. In the International Bill of Human Rights, the term "people" was used several times when recognizing rights and conferring obligations. The concept of reparations was directed at peoples, whether they were victims of colonization or of slavery and regardless of time period. The matter of the date should be left for political leaders to determine. The black slave trade had targeted a people, and it was a people that was concerned. It had been said that if an act had not been considered a crime when it was committed it was not possible to obtain reparations. Yet slavery was considered to be a crime against humanity, and must be covered by imprescriptibility, international and universal competence, in accordance with the Rome Statute of the International Criminal Court. One should assume that compensation could not be quantified but merely estimated, and that such compensation should go to the people and not to their leaders.

55. Mr. PREWARE paid a tribute to Mr. Guissé, who had had the courage to express his convictions. He was pleased that members of the Sub-Commission had taken up the debate on the question of recognizing the victims of colonization and slavery from a human rights standpoint and that they agreed to recognize the injustices that had been done and the need for reparations. He urged the members of the Sub-Commission, which had a mandate to promote and protect human rights and continued to be the conscience of the international community, to raise their voices in other forums on the eve of the Durban Conference, where there was clearly

some reluctance to acknowledge not only the moral aspect of the question of reparations but also its economic consequences. The draft resolution proposed by Ms. Warzazi would provide an opportunity to state the Sub-Commission's position. The question of reparations should be considered from a technical standpoint as well, although it was not within the Sub-Commission's competence to do so, nor was it the time or place to begin a study on that topic.

56. Ms. WARZAZI said that she did not wish to see the question of victims of the Second World War and that of the victims of colonialism and slavery considered in the same light. The Nürnberg Tribunal had tried those responsible for crimes committed during the Second World War. However, no tribunal had judged those who had been responsible for colonialism. She therefore invited the Sub-Commission to take up the topic, which had never been considered within the United Nations, limiting itself to colonialism and its impact on human rights. She also wished to point out that it was in Morocco, during the Rif War, that the first poison gas had been used.

57. Mr. SIK YUEN noted that some members of the Sub-Commission were recommending the preparation of a study or a report on the topic. However, the Sub-Commission should ensure that such a study or report did not duplicate other important documents, such as the Revised Set of Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law prepared by Mr. van Boven (E/CN.4/Sub.2/1996/17), or the report on the question of the impunity of perpetrators of human rights violations (civil and political) prepared by Mr. Joinet (E/CN.4/Sub.2/1997/20/Rev.1), or the work of Mr. Bassiouni, independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, who had been appointed by the Commission on Human Rights in 1998.

58. He noted that the Sub-Commission was approaching the question of reparations by going back in time to the period of colonization but had not dealt with the question of the right to effective compensation for current victims of human rights violations. Yet existing provisions in that area seemed unsatisfactory, and the Sub-Commission should carefully consider the question of State responsibility as it applied to human rights violations. Furthermore, when crimes, particularly crimes of a racist nature, were committed by groups, the application of the principle of strict no-fault liability should allow victims to obtain compensation, even when it was not possible to identify the perpetrator or perpetrators of the violation in question. Such an initiative would be justified not only in moral terms, but also in legal terms, since responsibility would be contemplated from the standpoint of the victims, and also in sociological terms, since it would meet a growing need for social justice.

59. Mr. KARTASHKIN observed that, while it was true that slavery and colonialism had been considered normal practice in the past, they were today considered to be crimes whose victims - peoples and countries - ought to be able to obtain compensation. That being the case, it was not enough to set out standards or principles; it was also necessary to secure the agreement of large groups of States on that sensitive question. It would in fact be hard to move ahead if a fairly unanimous approach could not be adopted. If the Sub-Commission wished to move the debate forward, it must therefore do everything possible to state a coherent point of view in the context of agenda item 2.

60. Nevertheless, the question of reparation was applicable to all human rights violations, regardless of their form or causes. Those could be numerous and complex, since human rights violations could be the result, for example, of conflicts between States, the refusal of some States to ratify major international instruments, the interference of certain States in the internal affairs of other States, including through the recruitment of mercenaries, or in the emergence of separatist movements that resorted to terrorism.

61. Mr. PINHEIRO said that he had the greatest respect for all victims of the Second World War; he was pleased to note that some of them had begun to obtain compensation and, likewise, that the victims of certain Latin-American dictatorships were beginning to be recognized as such and even to obtain compensation in some cases. Societies were also beginning to take action on behalf of those who were being left behind by globalization. As for the victims of arbitrary police practices, which seemed to occur regularly in the major democracies every time peaceful demonstrations were mounted to protest against the holding of summit meetings of the Group of Seven (G 7), victims in whom the Sub-Commission ought perhaps to take an interest, they had an opportunity to defend themselves and made use of it.

62. In contrast, the descendants of the victims of slavery and colonialism could not defend themselves. The Sub-Commission had a duty to help them ensure that the responsibility of the colonial Powers was acknowledged. It would of course be interesting to prepare a study or a report on the subject, but it was above all extremely important to send a clear message, in the form of a resolution, to the World Conference against Racism.

63. Mr. SORABJEE said that there was nothing ambiguous about the question. Slavery was indeed a crime against humanity, even if its practices had been considered normal at the time in which they had been committed, and it was imperative at the very least that the States that had profited from slavery should explicitly recognize that and accept their moral responsibility. Questions of a more practical nature, such as determining how far back in history to go, whether compensation should be provided and, if so, how and to whom could be settled later, in other international forums. In the meantime, the Sub-Commission ought to take the first step and, in a resolution, call upon those States that had profited from slavery to acknowledge their moral responsibility.

64. Ms. TERAO agreed that the questions of acknowledging the violations committed and reparation for those violations were very important; however, the Sub-Commission should also focus on the notion of transmitting the memory to future generations. She referred in particular to the question of "comfort women" during the Second World War and cautioned against giving younger generations a simplistic view of the human rights violations committed by preceding generations without placing them in their context.

65. Mr. EIDE supported Mr. Pinheiro's proposal to send a strong message to the Durban Conference.

66. Mr. PARK said he understood that the proposal by Mr. Pinheiro and Mr. Eide was to transmit a Sub-Commission resolution to the World Conference against Racism concerning the moral responsibility of the former colonial Powers and the countries that practised slavery.

67. Ms. WARZAZI proposed that Mr. Pinheiro and Mr. Eide along with Ms. Zerrougui should be assigned to prepare a draft resolution on the topic with the assistance of any other Sub-Commission members who desired to do so.

68. Mr. GUISSÉ said that he wished to participate in the drafting of the text.

69. The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Commission wished to prepare a draft resolution on the moral responsibility of the former colonial Powers and countries that had practised slavery which would be sent to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

70. It was so decided.

71. Ms. HAMPSON recalled that Mr. Guissé had mentioned the problem of human immunodeficiency virus (HIV) and AIDS and the actions of the major pharmaceutical companies. She hoped that the Sub-Commission would return to that topic, possibly under agenda item 4.

Statements in exercise of the right of reply

72. The CHAIRMAN invited observers from countries wishing to do so to make statements in exercise of their right of reply.

73. Mr. BENCHERIF MOHAMED EL AMIME (Observer for Algeria), referring to the remarks made by the representative of the International Federation of Human Rights Leagues (FIDH) on the situation of human rights in Algeria, said that FIDH was not in a position to preach to countries of the Third World. Between 1922, when FIDH had been established, and the 1970s, when a number of African countries had gained independence, FIDH had supported all colonialist policies and had remained silent in the face of revolts by African peoples. In particular, it had not reacted to the deportations of King Behanzin of Dahomey and King Mohamed V of Morocco. It had never taken a stand on the Sétif and Guelma massacres which had taken place in Algeria on 8 May 1945, nor on the massacre in Madagascar in 1947. While it had welcomed the adoption of the Universal Declaration of Human Rights in 1948, it had in fact claimed that the time had not been right to apply that instrument to colonized peoples. Lastly, FIDH had remained blind to the massacre of Algerian workers in Paris on 17 October 1961, even though that massacre had occurred in front of its headquarters.

74. For all those reasons, the Algerian Government considered that FIDH was unworthy to address the United Nations, and all its allegations regarding any country at all were null and void. Moreover, FIDH should stop hiding behind the French League of Human Rights, which had at times played a distinguished role.

75. Mr. EIDE asked whether FIDH would have an opportunity to make a statement in reply to the comments made by the observer for Algeria.

76. The CHAIRMAN said that FIDH would have an opportunity to take the floor again during the consideration of other agenda items if it so desired.

77. Mr. HAMZALT (Observer for Malaysia) said it was unfortunate that the observer for the World Organization Against Torture had spoken of the arrest and detention of certain activists under the Internal Security Act by presenting only part of the facts and taking them out of context. Malaysians were in fact free to participate in the democratic process, but unconstitutional activities aimed at undermining the country's democratic institutions to the detriment of public order were not sanctioned by either the people or the Government of Malaysia. The activists referred to by the observer for the World Organization Against Torture had been detained because the police had found it necessary to question them as part of an ongoing investigation of some of their activities. The police had reason to believe that the activists had planned to organize street demonstrations and illegal assemblies with a view to removing the democratic Government. The activists had not been incarcerated, however. The police, being mandated to ensure respect for the rule of law and maintain public security, were therefore allowed to take preventive measures under the Internal Security Act.

78. That Act had been enacted in accordance with article 149 of the Malaysian Constitution, which concerned procedures to prevent subversion, organized violence and acts prejudicial to public order and peace. It sought to protect Malaysia's democratic institutions, social and economic security and to preserve harmony and stability within a multiracial, multicultural and multireligious society. The Act was not intended to punish those with divergent political views, so long as those views were expressed peacefully within the framework of the democratic process and the laws of Malaysia.

The meeting rose at 6.05 p.m.